THE HON'BLE SRI JUSTICE K.C. BHANU

DATED: 29—07—2005

W.P.Nos. 10903, 13658 and 18155 of 2004

Between:

Dilshad Begum and others

…Petitioners.

A n d

The Commissioner & Director of

School Education, Government of A.P.

HYDERABAD and others

…Respondents.

The Hon'ble Sri Justice

K.C. Bhanu

W.P.Nos. 10903, 13658 and 18155 of 2004

COMMON ORDER:

W.P. 10903 of 2004 is filed challenging the notification issued by the 4th respondent seeking to fill up certain vacancies in Uravakonda Muslim Educational Association whereas W.P. 13658 of 2004 is filed challenging the orders of the 1st respondent dated 27.7.2004 ratifying the change of Correspondentship and W.P. 18155 of 2004 is filed challenging the orders of 1st and 3rd respondents dated 22.7.2004 and 24.7.2004 respectively to stop the recruitment process held on 18.7.2004 in Aided Arabic High School at Uravakonda and consequential cancellation of recruitment process.

Insofar as W.P. 10903 of 2004 is concerned, learned counsel for the petitioners reported no instructions for the petitioners. Therefore, the writ petition is dismissed as the counsel for the petitioners reported no instructions.

As the issue involved in both the writ petitions viz., W.Ps. 13658 of 2004 and 18155 of 2004 is common, both the writ petitions are disposed of by this common order.

The case of the petitioners in W.P. 13658 of 2004 is that one Silar Sarmas Vali is the President of the 1st petitioner-society. Earlier to him one T. Hussain Ahmed was the President in 1998-2000. During his tenure he appointed the 4th respondent as Correspondent of the School. Subsequently, after approval of the election Silar Sarmas Vali the executive body appointed D.B. Zeelani as Correspondent of the 2nd petitioner school and the 2nd respondent approved the said appointment. The 4th respondent did not even

renew his membership to the Association. But, the 2nd respondent vide Rc.No.1116/S3/2001 dated 20.2.2002 transferred the correspondent-ship to the 4th respondent accepting the proposal of the former President, without even issuing notice to the petitioners, in violation of the principles of natural justice and without application of mind. Hence the writ petition.

The case of the petitioners in W.P. 18155 of 2004 is that they are appointed in various capacities pursuant to the permission granted by the 3rd respondent vide proceedings dated 19.6.2004 after due selection as per the procedure contemplated under the A.P. Education Rules, 1993 framed under G.O.Ms.No.1, Education Department, dated 1.1.1994. The Management pursuant to the 3rd respondent's permission orders dated 19.6.2004 issued Notification to fill up the vacant teaching and non-teaching posts. The opposite party which is contending for the management filed W.P. 10903 of 2004 and obtained status quo orders. However, the same were vacated on 5.7.2004 with further permission to proceed with the recruitment process and subsequently the petitioners were appointed. But, the Government without issuing any notice or affording opportunity cancelled the selection process held on 18.7.2004 without assigning any reason and without any power and also superseded the elected Management of the school by another order which was stayed by this Court and the 3rd respondent issued consequential orders in Rc.No.6079/B2/2003, dated 24.7.2004 cancelling the recruitment held on 18.7.2004. Hence the writ petition.

On the other hand, the case of the respondents in W.P. 13658 of 2004 is that even after T. Hussain Ahmed taken charge as

the President of the Association in the year 1998, Mahaboob Sab was allowed to continue as Correspondent of the Aided Arabic High School, Uravakonda. A resolution was passed by the General Body on 17.4.2004 removing Mahaboob Sab from the executive committee membership and appointing Syed Azamathulla Hussain as new Correspondent and the same was approved subject to the ratification by the Commissioner and Director of School Education and subject to the outcome of final orders in W.P. 22444 of 2001. The Government issued Memo No.8719/CS-1/2004-2 dated 27.7.2002 restoring the change of Correspondent-ship from B. Mahaboob Sab to Syed Azamathulla Hussain as per the powers vested under Section 24 of the A.P. Education Act 1 of 1982 with reference to G.O.Ms.No.74 dated 27.2.1989 and G.O.Ms.No.147 Education dated 21.6.90 subject to the final orde4rs in W.P. 22444 of 2001 and W.P. 6614 of 2002.

The case of the respondents in W.P. 18155 of 2004 is that the 3rd respondent issued orders dated 24.7.2004 for cancellation of recruitment process held on 18.7.2004 at Aided Arabic High School, Uravakonda as per the directions of this Court in W.P. 10903 of 2004 dated 5.7.2004 and the telegraphic orders of the Commissioner and Director of School Education, Hyderabad dated 16.7.2004 as per the orders of the Government Memo No.10244/C1-1/2004-1 dated 22.7.2004. Hence there is no illegality in cancellation of illegal recruitment carried out flouting all the relevant rules and regulations in force.

Learned counsel appearing for the petitioners in both the writ petitions Sri Kasa Jaganmohan Reddy contended that Silar

Sarmas Vali is elected as the President of the 1st petitioner – Muslim Educational Association and one Mahaboob Saheb continued as the Correspondent and when the former President raised a dispute with regard to election of the present President, the Joint Collector appointed a Revenue Divisional Officer as the Enquiry Officer to conduct enquiry and in pursuance of the enquiry report the Joint Collector held that he was duly elected as the President of the Association w.e.f. 25.12.2000. Thereafter, the 2nd respondent accepted Silar Sarmas Vali as the President of the 1st petitioner – Association and thereafter the executive body appointed one D.B. Zeelan as the Correspondent of the 2nd respondent and the 2nd respondent also approved the same. Therefore the proposals of the former President have no effect and the consequential impugned proceedings accepting the orders of the former President is without any basis and misconceived and hence he prays to allow the writ petition.

With regard to W.P. 18155 of 2004, the learned counsel for the petitioners contended that the Government issued the impugned proceedings dated 22.7.2004 stopping the recruitment process, which is illegal and arbitrary; that after obtaining prior permission the posts were notified and after following the due procedure in selecting the candidates the recruitment was started and at the behest of the Ex-M.L.A. and without affording any opportunity the Government decided to cancel the selection process; the 3rd respondent also nominated his name, the selection process was held on 18.7.2004 as per schedule and petitioners 1 to 6 also reported for duty and the 6th petitioner also sent proposals to the 3rd

respondent for approval of the appointment of the petitioners 1 to 5 and hence he prays to set aside the impugned proceedings of the Government and approve the appointment of petitioners 1 to 5.

Learned Government Pleader appearing for respondents 1 to 3 in W.P. 13658 of 2004 contended that the change of correspondent-ship from B. Mahaboob Saheb to Syed Azamathulla Hussain has been approved by the Commissioner and Director of School Education, but the Government on appeal granted stay vide its order dated 21.3.2002; that the status of election held on 25.11.2000 was under cloud; therefore, in the eye of law Syed Azamathulla Hussain is the Correspondent of the School and he is not replaced and hence he prays to dismiss the writ petition.

Respondents 4 and 5 got impleaded in W.P. 18155 of 2004. Learned counsel for the respondents 4 and 5 contended that the selection procedure followed by the Management is completely not in accordance with the Rules governing the recruitment; that no schedule was announced for the written test and the interview and when the stay of selection process was granted by this Court, the Management issued call letters on 12.7.2004. He further contended that because of news item appeared in the News Papers on 18.7.2004 wherein it was informed that the recruitment process has been postponed, out of 177 candidates applied for 7 posts only 75% appeared for the test and the Government nominee was not present in the selection process and the selection of the petitioners is highly irregular.

There is a serious dispute with regard to President of Muslim Educational Association (hereafter referred to as

'Association'). The Association established Aided Arabic High School, Uravakonda (hereafter referred to as 'School') in the year 1962, which is a minority educational academy. The said school was admitted into grant-in-aid in the year 1962. In the year 1966 after conducting enquiry, the District Educational Officer approved the correspondent-ship of Sri B. Mahaboob Saheb vide proceedings dated 10.5.1966, who was elected by the executive body headed by Abdulla, the President of the Association. As per the original bye-laws of the Association, the term of office of the executive body and the office bearers of the Association was two years. In the year 1998, T. Hussain Ahmed was elected as the President of the Association and Mahaboob Saheb was allowed to continue as Correspondent of the School. It seems in the general body meeting of the Muslim Educational Association, Uravakonda said to be held on 17.4.2000 a resolution was passed giving amendment to the bye-laws – 3A of the Society enhancing the period of term of the office of the executive body from 2 years to 5 years and also holding general body of the Association from 3 years to 5 years and removing Mahaboob Saheb from executive committee membership and appointing Syed Azamathulla Hussain as new Correspondent. The Regional Joint Director, Cuddapah approved the change of correspondent-ship from Mahaboob Saheb to Syed Azamathulla Hussain subject to outcome of final orders in W.P. 22444 of 2001. The proceedings dated 27.7.2004 is under challenge in W.P. 13658 of 2004. Ultimately, W.P. 22444 of 2001 was withdrawn.

The Commissioner and Director of School Education

vide order dated 20.2.2002 ratified the action of the Regional Joint Director in having approved the change of correspondent-ship from Mahaboob Saheb to Syed Azamathulla Hussain in respect of the School. The said proceedings has been stayed on the representation of the President of the Muslim Educational Academy.

As per the proceedings of the Commissioner and Director of School Education dated 5.2.2003, Silar Sarmas Vali is the properly elected President of the Association. Ahmed Hussain filed W.P. 23053 of 2000 before this Court to declare the action of the 1st respondent in not approving the appointment of Syed Azamathulla Hussain as the Correspondent. The said writ petition was disposed of on 13.11.2000 at the admission stage with a direction to the petitioner therein to submit proposals to the Regional Joint Director within a period of one week and the Regional Joint Director was directed to dispose of the same. In pursuance of the said direction, the impugned proceedings dated 20.2.2002 have been passed.

It is vehemently contended by the learned counsel for the petitioners that in pursuance of the enquiry conducted by the Joint Collector, the Commissioner and Director of School Education declared Silar Sarmas Vali as the President of the Association, therefore Silar Sarmas Vali only is competent to nominate the Correspondent and the competent authority has to approve the same. For that proposition, he relied upon a decision of this Court in **G. Prakasha Rao v. D.E.O. Kurnool** wherein it is held that the executive committee is thus the management in relation to the school in question and its power to nominate or appoint the Correspondent cannot be disputed in the light of the provisions contained in Section

24(2) of the A.P. Education Act (for short, 'the Act'). Under Section 24(2) of the Act, a power has been conferred on the management to nominate a person to manage the affairs of the Institution whether called by the name of Secretary, Correspondent or by any other name and intimate such a nomination within 30 days thereof to the Department.

He also relied upon a decision in **G.J.R. Sunand v. Convention of Baptist Churches of Northern Circars (CBCNC)** wherein it is held that Sub-Section (2) of Section 24 of the Act mandates that management shall, for the purposes of the Act, nominate a person to manage the affairs of the Institution. Such a nomination to manage the affairs of the Institution is the privilege of the management. Therefore, from the above decision it is clear that it is the exclusive prerogative of the management to appoint its Correspondent to manage the affairs of the Institution. But, in this case there is a serious dispute with regard to the election of the President of the Association. According to the petitioner, one T. Hussain Ahmed was the President for a period of two years from 1998 to 2000 and after he ceased to be the President of the 1st petitioner – Association, on 25.11.2000 one Silar Sarmas Vali was elected as the President of the 1st petitioner-Association. An enquiry was conducted by the Joint Collector who submitted a report t the Government. the Joint Collector conducted an enquiry and observed that Silar Sarmas Vali was elected as the President of the Association on 25.11.2000. But, on the other hand the case of the respondents is that in the general body meeting of the Muslim Education Association held on 17.4.2000 a resolution was passed giving amendment to

bye-laws – 3A of the Association enhancing the term of the office of the executive body from 2 to 5 years and also holding of general body of the Association from 3 to 5 years. If that is the case, there is a serious dispute with regard to the Executive Committee of the school. When there is a serious dispute with regard to the election to the post of the President, the same has to be resolved not by this Court. In this context, it is pertinent to refer to a decision of this Court in **K. Rama Sastry v. Government of Andhra Pradesh** wherein it is held:

> "In the event of any dispute among the rival claimants for such incorporeal rights to manage the educational institution the dispute has to be necessarily resolved in a civil Court. There is always complex and competing oral evidence to be appreciated and hence it is better the matter is resolved in a Civil Court because the right to the management of an educational institution is a common law right and the jurisdiction of the civil Court in such a case is not specifically ousted".

So, in this case also there is a serious dispute with regard to the President of the Association because the fact whether T. Hussain Ahmed was continued as the President after 17.4.2000 by virtue of the amendment to the bye-law enhancing the period of term of the office of the executive body is true or not and whether Silar Sarmas Vali is duly elected as the President of the Association on 25.11.2000 is in serious dispute. Therefore, it is for them to establish the same in a competent civil Court. No doubt, the Commissioner and Director of School Education declared that Silar Sarmas Vali is the properly elected President of the Muslim Educational Association, but the order of the Commissioner dated 5.2.2003 does not refer to the amendment sought to have been

effected by the general body on 17.4.2000 enhancing the period of term of office from 2 to 5 years. Even otherwise, the Commissioner and Director of School Education is not the competent authority to decide and determine when a dispute arose with regard to the President of the School. Because the term of office has been enhanced from 2 to 5 years, the Commissioner and Director of School Education approved the change of Correspondent from B. Mahaboob Saheb to Syed Azamathulla Hussain and the Government also ratified the action of the Regional Joint Director by issuing the impugned proceedings. Therefore, the impugned proceedings cannot be said to be illegal or arbitrary and the remedy of the petitioners is otherwise.

Hence, W.P. 13658 of 2004 is devoid of merit and it is accordingly dismissed.

Coming to W.P. No.18155 of 2004, the cancellation of selection of petitioners 1 to 5 is under challenge. After obtaining necessary permission from the Government the management issued the notification to fill up the vacant teaching and non-teaching posts. In pursuance of the said notification, nearly 177 candidates have applied for certain posts. W.P. 10903 of 2003 was filed and status quo orders were obtained in WPMP No.13852 of 2004 on 5.7.2004. The recruitment was scheduled on 18.7.2004. Vide orders dated 14.7.2004 this Court vacated the status quo orders and permitted the management to proceed with the recruitment process. The 6th petitioner was communicated with the Court orders dated 14.7.2004 by fax on 15.7.2004. The 3rd respondent also nominated his nominee. The selection process was held on 18.7.2004 and in the

selection process the petitioners 1 to 4 were appointed as Teachers and the 5th petitioner was appointed as an Attender. The 6th petitioner sent proposals to 3rd respondent for approval of the appointment of petitioners 1 to 5 vide proceedings dated 19.7.2004. A news item appeared in 'Vaartha' daily on 18.7.2004 to the effect that the District Educational Officer M. Laxminarayana informed that the interviews to be held on 18th July, 2004 have been postponed indefinitely as per the directions of the State Level Educational Officers of the Department. The said fact is not disputed. Though 177 candidates applied for the posts, in the written test conducted by the management only 75% attended the test. Because of the news item in the newspaper, there is every possibility for the other candidates in not attending the written test. This Court granted status quo orders with regard to filling up of posts and admittedly they were in existence till 14.7.2004. Therefore, the management has no authority to send call letters on 12.7.2004 fixing the written test as 18.7.2004. Had the management acted properly, it would have postponed the same. The Director of School Education vide proceedings dated 16.7.2004 requested the District Educational Officer to suspend the interview for the posts in Arabic Aided School, Uravakonda until further orders. In spite of that, the management proceeded further and selected and appointed certain persons. Admittedly, as per the Rules the departmental nominee has to be present. Without taking prior permission from the competent authority and without giving reasonable opportunity to the District Educational Officer to nominate his nominee, the selection process was proceeded further and the written test and interviews were conducted on the same day and the

selection of candidates was taken place and the proposals have been submitted immediately on the same day. Certain procedure had to be followed when the departmental nominee has not attended on 18.7.2004. Therefore, the proposals of the 6th petitioner were negatived and returned by the 3rd respondent vide proceedings dated 26.8.2004. The said proceedings has not been challenged. Under Rules 12(5) of the G.O.M.S.No.1 dated 1.1.1994 there would be nominee of the District Educational Officer in the selection committee. In conducting written test certain procedure has to be followed as per the proceedings of the 2nd respondent dated 24.9.2002. That procedure has not been followed. Since the selection process is not conducted in accordance with the Rules, the Government took a decision to cancel the recruitment process held on 18.7.2004. The same cannot be said to be arbitrary exercise of power. No doubt the said order is based upon the representation of the Ex-M.L.A but at the same time after going through the entire material on record it is evident that the management headed by Silar Sarmas Vali acted in a post-haste manner in conducting the recruitment in utter violation of the Rules. Therefore, the said Act of the Government cannot be said to be illegal.

It is contended by the learned counsel for the petitioners that the Government imposed a complete ban of filling up of aided posts vide proceedings dated 18.10.2004; that the school cannot function without teachers and the recruitment cannot be conducted in view of the ban, the appointment of the petitioners 1 to 5 has to be accepted. The said contention cannot be accepted. Since their

appointments are not in accordance with law, the same cannot be approved. The ban imposed by the Government dated 20.10.2004 reads as follows:

> "No new posts of Government aid would be created and the existing vacancies will also not be filled up except what has been specifically authorized since there is a general ban of recruitment except for the posts for which permission was specifically granted by the Government".

The above ban applies only when the permission was not taken. Since permission was taken prior to 20.10.2004, there would not be any difficulty for the management to fill up the posts and the ban imposed by the Government would not apply.

Therefore, impugned proceedings do not suffer from any legal infirmities so as to call for interference by this Court and accordingly W.P. 18155 of 2004 is also dismissed.

In the result, all the writ petitions are dismissed. No order as to costs.

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K.C. Bhanu, J.

Date: --07—2005.

MVB.